IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION.

CIVIL APPLICATION NO.2907 OF 2005.

IN

FIRST APPEAL STAMP NO.167 OF 2003.

Smt.Shyamraji Widow of Chigud Yadav : Applicant.

versus

Shri Chandrasen Singh Shivbaran Singh & ors. : Respondents.

Mr.Y.R.Dube for the applicant.

Mr.P.G.Sawant for Respondent No.1.

CORAM : D.G.DESHPANDE,J.

DATED : 4th July 2005.

ORAL ORDER

1. This application is filed by the appellant for condonation of delay and setting aside the order of dismissal of appeal. Appeal was admitted. The appellant was directed to prepare paper book. Accordingly he prepared the paper book. But that has not taken on record. The respondents applied for expediting the

hearing of the appeal. Hence for non-compliance the appeal came to be dismissed.

2. The appeal was filed by the original plaintiff against the dismissal of suit on merits. It is in respect of conducting business. Considering the circumstances in which the appeal came to be dismissed, the delay is condoned. Impugned order of dismissal of appeal has to be set aside.

3. The counsel for the respondent took strong objection to the letter written by the appellant's advocate making allegations of fraud. In his notice dated 22nd June 2005 the advocate for the appellant expressed his regrets about those allegations and withdrawal of them . In view of this, this application is allowed subject to payment of Rs.2,500/-. Payment of costs is a condition precedent. Costs to be paid within three weeks from today otherwise the order of dismissal will stand as it is. Thereafter, if the costs is paid, the appeal to be fixed for final hearing on 10th August 2005. Interim order to continue until further orders.

[D.G.DESHPANDE]